IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9116 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PARSOTTAM ALIAS PANCHABHAI JIVABHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UR BHATT, ADDL.GOVERNMENT PLEADER for Respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 26/03/98

ORAL JUDGEMENT

The petitioner, pursuant to the detention order, dt. 13/11/1997 passed by the Police Commissioner, Rajkot City under Sec.3 of the Gujarat Prevention of Anti-Social Activities Act (for short the 'Act'), is arrested and kept under detention. He, by this application, calls in question the legality and validity of the said order by preferring this application under Art. 226 of the

Constitution of India.

2. The Commissioner of Police for the city of Rajkot came to know during the course of his performance of duties at Rajkot that the petitioner was doing nothing, except often committing several offences, as he was habitual offender. He used to commit the thefts of cars, scooters and other valuable articles. In order to carry out his criminal activities, he used to keep lethal weapon with him and whoever tried to resist, he using the weapon and by criminal force caused injuries. Thus he was terrorising the people.The Police Commissioner also examined the records of different Police Station and found that about 10 complaints of theft & trespass punishable under Sec. 379 and 447 of I.P.Code were registered in A Division Police Station, Bhaktinagar Police Station, Rajkot Taluka Police Station and Malaviya Police Station. As alleged in those complaints, the petitioner has committed the theft of different motor cars, and scooters. The Police Commissioner, when attempted to record the statements of the witnesses, no one was willing to come forward and state against the petitioner because of the fear of violence and when assurance was given that their particulars disclosing their identity would be kept secret, some of the persons under great tension, showed their willingness to make the statement. The Police Commissioner recorded few of the statements. After inquisition, the Police Commissioner could find that the petitioner was considered to be the dangerous person by the people, because he used to get his works done by coercive measures. By force & threats, he used to wield the sceptre, run amok on the crowd, cause the people to chevy & wilt them. On 28/8/1997, the petitioner had gone to the shopkeeper and demanded Rs.6,000/- but as the shopkeeper refused to pay, he was beaten brutally and had assaulted the crowd wielding the weapon, he was having. The people then ran helter-skelter. One hour after the shopkeeper returned to his shop. He found that his goods in the shop were damaged and every thing was found scattered. On 8th June, 1997, putting the owner of the scooter in imminent danger of death or injury, he took away the scooter and when the people tried to chase him, they were assaulted and some of them were injured by knife. Accordingly, the petitioner was found committing different wrongs, putting the people in fear of imminent death or injury. The people were under the heel of the petitioner because of fear of violence. The Police Commissioner thought that his anti-social activities were required to be curbed any how, but he could mark that any action under general law sounding dull would yield no result, and the same would

be the futile exercise. The Police Commissioner then thought it wise to pass the impugned order and arrested the petitioner. Accordingly, the order came to be passed and at present, the petitioner is kept under detention. This application is, therefore, filed challenging the legality and validity of that order.

3. On different ground, the order in question is challenged. During the course of arguments, after my query, both the parties tapered off their submissions confining to the only ground viz exercise of privilege under Sec.9(2) of the Act. I will, therefore, deal with the same going to the root of the case, without dwelling upon other grounds. According to the petitioner, there was no good cause to suppress the source of the statements. The particulars of the witnesses ought to have been furnished for effective representation. Had the same been supplied, he would have pointed out whether the statements were reliable, or bogus. In reply, Mr. Bhatt the learned A.P.P. submitted that inthe public interest namely not to put the witnesses to the risk of their lives, the authority passing the order after anxious consideration thought it fit not to disclose the particulars of the witnesses. The privilege was, therefore, rightly exercised.

4. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating non-discosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension

expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference of a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others- 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel Vs. State of Gujarat & Others 35(1) [1994(1)] G.L.R. 761, may be made.

5. In view of such law, the authority passing the detention order has to satisfy the court that it was absolutely necessary in the public interest to suppress the particulars about witnesses keeping their safety in mind. No affidavit has been filed by the Police Commissioner who passed the order of detention. When no affidavit is filed, I am entitled to infer against the

authority passing the order, and it can be assumed that without just and proper cause, privilege has been exercised, and without application of mind, the decision was taken by the authority. Reading the order, it appears that task of inquiry was entrusted to other Police Officer to find out whether fear expressed by the witnesses was genuine or imaginary or empty excuses. The Police Commissioner, without studying personally the report submitted by the Police Officer, has accepted the same. When he has mechanically accepted the report, his satisfaction is vitiated, and therefore, the privilege exercised, being unjust and improper, the order of detention must be held to be unconstitutional and illegal.

6. For the aforesaid reason, this application is allowed. The order of detention dt. 13/11/1997 passed by the Police Commissioner, Rajkot, being unconstitutional and illegal, is hereby quashed and set aside and the petitioner is ordered to be set at liberty, if no longer required in any other case. Rule accordingly made absolute.

Date: 26/3/1997. -----
(ccs)